

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

CARL MCDONALD, JR.,)
)
 Plaintiff,)
)
 v.) No. 4:09CV491 FRB
)
 ALAN BLAKE, et al.,)
)
 Defendants.)

MEMORANDUM AND ORDER

This matter is before the Court upon the motion of Carl McDonald for leave to commence this action without prepayment of the filing fee pursuant to 28 U.S.C. § 1915. Upon consideration of the financial information provided with the motion, the Court finds that plaintiff is financially unable to pay any portion of the filing fee. As a result, plaintiff will be granted leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. Additionally, the Court has reviewed the complaint and will dismiss it pursuant to 28 U.S.C. § 1915(e)(2)(B).

28 U.S.C. § 1915(e)

Pursuant to 28 U.S.C. § 1915(e)(2)(B), the Court may dismiss a complaint filed in forma pauperis if the action is frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief against a defendant who is immune from such relief. An action is frivolous if “it lacks an arguable basis in either law or in fact.”

Neitzke v. Williams, 490 U.S. 319, 328 (1989). An action fails to state a claim upon which relief can be granted if does not plead “enough facts to state a claim to relief that is plausible on its face.” Bell Atlantic Corp. v. Twombly, 127 S. Ct. 1955, 1974 (2007).

In reviewing a pro se complaint under § 1915(e)(2)(B), the Court must give the complaint the benefit of a liberal construction. Haines v. Kerner, 404 U.S. 519, 520 (1972). The Court must also weigh all factual allegations in favor of the plaintiff, unless the facts alleged are clearly baseless. Denton v. Hernandez, 504 U.S. 25, 32-33 (1992); Scheuer v. Rhodes, 416 U.S. 232, 236 (1974).

The Complaint

Plaintiff, a civilly committed resident at the Missouri Sexual Offender Treatment Center (MSOTC), brings this action under 42 U.S.C. § 1983. Named as defendants are Alan Blake (Chief Operating Officer, MSOTC) and Rebecca Semar (Therapeutic Recreational Specialist, MSOTC). Plaintiff is suing defendants in their official capacities. The complaint seeks declaratory, injunctive, and monetary relief.

Plaintiff alleges, generally, that the law library at MSOTC is inadequate because it does not contain enough materials. Plaintiff says that he has complained to defendants about the law library on several occasions but that they have failed to remedy the situation. Plaintiff claims that he was part of a lawsuit in 2004 and that he

voluntarily dismissed the action because he felt he could not adequately prosecute it without a better law library.

Discussion

“To state a claim [for denial of meaningful access to the courts], inmates must assert that they suffered an actual injury to pending or contemplated legal claims.” Myers v. Hundley, 101 F.3d 542, 544 (8th Cir. 1996). Plaintiff has not alleged that he has suffered an injury to a pending or contemplated legal claim. As a result, plaintiff has not stated a viable claim for denial of meaningful access to the courts.

Naming a government official in his or her official capacity is the equivalent of naming the government entity that employs the official, in this case the State of Missouri. Will v. Michigan Dep’t of State Police, 491 U.S. 58, 71 (1989). “[N]either a State nor its officials acting in their official capacity are ‘persons’ under § 1983.” Id. As a result, the complaint fails to state a claim upon which relief can be granted.

For these reasons, the Court will dismiss this action under 28 U.S.C. § 1915(e).

Accordingly,

IT IS HEREBY ORDERED that plaintiff’s motion to proceed in forma pauperis [Doc. #2] is **GRANTED**.

IT IS FURTHER ORDERED that the Clerk shall not issue process or cause process to issue upon the complaint because the complaint is legally frivolous or fails to state a claim upon which relief can be granted, or both.

An appropriate Order of Dismissal shall accompany this Memorandum and Order.

Dated this 24th Day of April, 2009.

/s/ Jean C. Hamilton
UNITED STATES DISTRICT JUDGE